

Image Access contends it should be able to resell a \$50 gift card incentive, Image Access withholds payment for services it purchases under the resale provisions of the ICA.

30. For each month since October 2004, Image Access has continued to withhold increasing amounts of money owed to BellSouth based on this erroneous interpretation of the Act and the ICAs. To date, Image Access has wrongfully withheld approximately \$1,782,125 owed to BellSouth under the terms of the ICAs. This sum includes amounts that Image Access owes to BellSouth for purchases of telecommunications services in all nine states in which BellSouth operates as an ILEC.

31. In addition, Image Access has also wrongfully withheld \$300,462.14 in late payment penalties that are due to BellSouth under the terms of the ICAs.

32. Image Access has continued to wrongfully withhold amounts owed to BellSouth notwithstanding the facts that (a) this Court has preliminarily enjoined the enforcement of those portions of the Commission's First and Second Resale Orders that would entitle Image Access to take such action, and (b) none of the state commissions in the other eight states in which BellSouth operates as an ILEC have entered orders similar to the ones that BellSouth has challenged in the NCUC Action. As a result, Image Access' actions are contrary to existing law in all nine states in which BellSouth operates as an ILEC.

FIRST CLAIM FOR RELIEF
(Breach of Contract)

33. BellSouth restates and realleges the allegations in paragraphs 1-32 of this Complaint as if fully set forth herein.

34. The ICAs referenced above embody the terms of valid and enforceable contracts by and between BellSouth and Image Access.

35. BellSouth has performed all of its duties and obligations under the ICAs and is entitled to payment in full for all telecommunications services sold to Image Access under the Resale provisions of the ICAs.

36. By wrongfully withholding payment and refusing to pay BellSouth amounts due under the terms of the ICAs, Image Access has materially breached the ICAs.

37. As a result of Image Access' breach of contract, BellSouth has suffered actual damages in an amount to be determined at trial, but in excess of \$2,000,000.

SECOND CLAIM FOR RELIEF
(Breach of Covenant of Good Faith and Fair Dealing)

38. BellSouth realleges and incorporates herein by reference the allegations in paragraphs 1-37 of this Complaint.

39. The ICAs contain an implied covenant of good faith and fair dealing.

40. Image Access has breached its covenant of good faith and fair dealing by refusing to pay BellSouth amounts due under the terms of the ICAs.

41. As a result of Image Access' breach of its implied covenant of good faith and fair dealing, BellSouth has suffered actual damages in an amount to be determined at trial, but in excess of \$2,000,000.

PRAYER FOR RELIEF

WHEREFORE, plaintiff BellSouth Telecommunications, Inc. respectfully prays for judgment as follows:

1. That BellSouth recover damages in an amount to be determined at trial, but in excess of \$2,000,000, plus interest as allowed by law;
2. That BellSouth recover its reasonable attorneys' fees and costs of suit incurred herein;

3. That this matter be tried before a jury; and
4. That the Court grant BellSouth such additional relief as the Court may deem just and proper.

Respectfully submitted, this 4th day of April, 2006.

BELLSOUTH TELECOMMUNICATIONS, INC.

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EXHIBIT I

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

P-100
Sub 72b

Civil Action 3:05-CV-345-MU

BELLSOUTH TELECOMMUNICATIONS,)
INC.,)

Plaintiff,)

v.)

JO ANNE SANFORD, Chairman;)
WILLIAM THOMAS CULPEPPER, III,)
Commissioner; ROBERT V. OWENS, JR.,)
Commissioner; SAM J. ERVIN, IV,)
Commissioner; LORINZO L. JOYNER,)
Commissioner; JAMES Y. KERR, II,)
Commissioner; and HOWARD N. LEE,)
Commissioner (in their official capacities)
as Commissioners of the North Carolina)
Utilities Commission),)

Defendants.)

OFFICIAL COPY

Notice of Appeal

FILED

JUN 12 2006

Clerk's Office
N.C. Utilities Commission

Notice is hereby given that Jo Anne Sanford, William Thomas Culpepper, III, Robert V.

Owens, Jr., Sam J. Ervin, IV, Lorinzo L. Joyner, James Y. Kerr, II, and Howard N. Lee in their official capacities as Commissioners of the North Carolina Utilities Commission (together, "the Commissioners"), all of the defendants in the above-named case, hereby appeal to the United States Court of Appeals for the Fourth Circuit from the Order granting Plaintiff BellSouth's Motion for Summary Judgment and denying the defendant Commissioners' Motion for Summary Judgment rendered in this action on the 15th day of May, 2006, and the judgment entered the 16th of May, 2006 in accordance with that Order.

Clerk
P.G. & Pforce
Bennink
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Counsel for Defendant Commissioners

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served the foregoing document in the above titled action upon all other parties to this cause by depositing a copy hereof, first class postage pre-paid in the United States mail, properly addressed to:

Frank A. Hirsch, Jr.
Matthew P. McGuire
Nelson Mullins Riley & Scarborough LLP
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This the 9th day of June, 2006.

s/ Margaret A. Force
Margaret A. Force
Assistant Attorney General